

SCHOOL DISTRICT: Not liable for maintenance and construction of division fence.

6-27  
June 26, 1935.

Honorable F. C. Bollow,  
Prosecuting Attorney,  
Shelbyville, Missouri.



Dear Sir:

We wish to acknowledge your request for an opinion under date of June 7, wherein you state in part as follows:

" \* \* \* would you please refer to the proper Assistant Attorney General, whoever he may be, the following question which can only be amicably settled here by an opinion from the Attorney General's office. Query: Whether a country school district, adjoining a land owner, is liable for the construction and maintenance of one half the fence between the land of the school district and the adjoining landowner. This question is about to cause a law suit here; one side has been advised by local attorneys that the district is liable to build such a fence and the other faction has been advised by another local attorney to the contrary, and I have gotten them to agree to abide by the decision of the Attorney General's office without any litigation."

Section 12911, R. S. Missouri 1929, provides as follows:

"Whenever the fence of any owner of real estate, now erected or constructed, or which shall hereafter be erected or constructed, the same being a lawful fence, as defined by sections 12906 and 12907, serves to enclose the land of another, or which shall become a part of the fence enclosing the lands of another, on demand made by the person owning such fence, such other person shall pay the owner

one-half the value of so much thereof as serves to enclose his land, and upon such payment shall own an undivided half of such fence."

Section 12916, R. S. Missouri 1929, provides in part as follows:

"Every person owning a part of a division fence shall keep the same in good repair according to the requirements of this chapter, \* \* \* Either party owning land adjoining a division fence \* \* \* may, upon the failure of any of the other parties, have all that part of such division fence belonging to such other parties repaired, upon the failure of such other party to do so, such repairing \* \* \* to be at the cost of the party so failing to repair \* \* \*"

We must determine whether the phrase "owner of real estate" can be applied to a "school district".

The Court in the case of *Florman v. School District No. 11, El Paso County*, 6 Colo. App. 319, 40 Pac. 469, 1. c. 470, said:

"It therefore becomes necessary to inquire whether the relations sustained by a school district to the school property is that of owner. The education of the children of the state is a duty which devolves upon the state government. Article 9 of the Constitution provides for a general system of public schools, the details to be supplied by legislation. The administration of the laws in relation to schools is confided to state officers, county officers and district officers. A school district is a subdivision of the state for educational purposes. The several officers charged with the supervision of the schools, from the state board of education are merely the instruments of the state government, chosen for the purpose of effectuating its policy in relation to schools. The duties which they perform are prescribed by state law. The property which

may be acquired for the purposes of the school, the manner of its acquisition, and the uses to which it shall be applied, are all regulated by legislative enactment pursuant to the constitution. No sale of the property, or disposition of the proceeds, is valid unless it is authorized by the laws of the state. The school district is created as a means for the more convenient and effective carrying out of the educational policy of the state. The entire control of schools and school property is in the state, to be exercised as it may see fit, subject to the requirements and restrictions contained in the Constitution, and school officers and school districts are merely the agencies through which it acts in the performance of duties with which it is charged by that instrument. By the terms of the statute all school property within the district is held by the school board in trust for the school district, for the benefit of the school, and the school is a state institution. We do not think that either the school board or the school district is, within any definition of the term, the 'owner' of the school property;

Again in the case of a "school board" the Court in the case of Board of Education of Cincinnati vs. Volk, 72 Ohio State 469, 74 N. E. 846, 1. c. 849, said:

"The title to school grounds and other school property is by express terms of the statute vested in the board of education. But for what purpose? It is not the private property of the board, but it is authorized to hold it for the state for the promotion and advancement of the education of the youth of the commonwealth, and its control is limited according to the will of the sovereign power. The board is a mere instrumentality of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state.

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Section 9269, R. S. Missouri 1929, deals with title to property under laws applicable to all classes of schools and provides as follows:

"The title of all school house sites and other school property shall be vested in the district in which the same may be located; and all property leased or rented for school purposes shall be wholly under the control of the board of directors during such time; but no board shall lease or rent any building for school purposes while the district schoolhouse is unoccupied, and no schoolhouse or school site shall be abandoned or sold until another site and house are provided for such school district."

Title to school house sites and other school property is by express terms of the statute vested in the district in which the same may be located. We use the words of the court in the Volk case, supra: "But for what purpose? It is not the private property of the board, but it is authorized to hold it for the state for the promotion and advancement of the education of the youth of the commonwealth, \* \* \*"

From the foregoing, we are of the opinion that a country school district is not an "owner of real estate" within the meaning of Section 12911, supra, so as to make it liable for the construction and maintenance of one-half of the fence between the land of the school district and the adjoining landowner.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

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